



7020-02

## INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-951]

### **Certain Lithium Metal Oxide Cathode Materials, Lithium-Ion Batteries for Power Tool Products Containing Same, and Power Tool Products with Lithium-Ion Batteries Containing Same**

#### **Notice of the Commission's Determination to Rescind a Limited Exclusion Order**

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the U.S. International Trade Commission has determined to rescind a limited exclusion order prohibiting importation of infringing lithium metal oxide cathode materials based upon settlement.

**FOR FURTHER INFORMATION CONTACT:** Panyin A. Hughes, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone 202-205-3042. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone 202-205-2000. General information concerning the Commission may also be obtained by accessing its Internet server (<https://www.usitc.gov>). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at <https://edis.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-205-1810.

**SUPPLEMENTARY INFORMATION:** The Commission instituted the underlying investigation on March 30, 2015, based on a complaint filed by BASF Corporation of Florham Park, New Jersey (“BASF”) and UChicago Argonne LLC of Lemont, IL (“Argonne”) (collectively, “Complainants”). 80 FR 16696 (Mar. 30, 2015). The complaint alleged violations of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain lithium metal oxide cathode materials, lithium-ion batteries for power tool products containing same, and power tool products with lithium-ion batteries containing same by reason of infringement of one or more of claims 1-4, 7, 13, and 14 of U.S. Patent No. 6,677,082 (“the ’082 patent”) and claims 1-4, 8, 9, and 17 of U.S. Patent No. 6,680,143 (“the ’143 patent”). *Id.* The notice of investigation named the following respondents: Umicore N.V. of Brussels, Belgium; Umicore USA Inc. of Raleigh, North Carolina (collectively, “Umicore”); Makita Corporation of Anjo, Japan; Makita Corporation of America of Buford, Georgia; and Makita U.S.A. Inc. of La Mirada, California (collectively, “Makita”). *Id.* The Office of Unfair Import Investigations was a party to the investigation.

On November 5, 2015, the ALJ granted a joint motion by Complainants and Makita to terminate the investigation as to Makita based upon settlement. *See* Order No. 32 (Nov. 5, 2015). The Commission determined not to review this order. *See* Notice of Non-Review (Nov. 23, 2015).

On February 29, 2016, the ALJ issued his final initial determination (“ID”), finding a violation of section 337 by Umicore in connection with claims 1-4, 7, 13, and 14 of the ’082 patent and claims 1-4, 8, 9, and 17 of the ’143 patent. On May 11, 2016, the Commission determined to review the final ID in part. 81 FR 30548-50 (May 17, 2016). The Commission

also granted Umicore's request for a Commission hearing. *Id.* On November 17, 2016, the Commission held a hearing on contributory infringement, laches, and the public interest. On review, the Commission determined to affirm the ALJ's finding of violation of section 337 with respect to the claims identified above. 81 FR 93960-62 (Dec. 22, 2016).

Having found a violation of section 337, the Commission determined that the appropriate form of relief was: a limited exclusion order prohibiting the unlicensed entry of lithium metal oxide cathode materials that infringe one or more of claims 1-4, 7, 13, and 14 of the '082 patent, or claims 1-4, 8, 9, and 17 of the '143 patent that are manufactured by, or on behalf of, or imported by or on behalf of Umicore N.V. and Umicore USA Inc. or any of their affiliated companies, parents, subsidiaries, agents, or other related business entities, or their successors or assigns.

On May 5, 2017, BASF, Argonne, and Umicore filed a joint petition under 19 U.S.C. 1337(k) and Commission Rule 210.76(a) (19 CFR 210.76(a)) to rescind the limited exclusion order based upon settlement. The parties filed both confidential and public versions of the settlement agreements. On May 9, 2017, the Commission investigative attorney filed a response in support of the motion.

The Commission has determined to grant the petition. The limited exclusion order issued in this investigation is hereby rescinded.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in Part 210 of the Commission's Rules of Practice and Procedure (19 CFR 210).

By order of the Commission.

Issued: June 6, 2017

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2017-12035 Filed: 6/9/2017 8:45 am; Publication Date: 6/12/2017]